Supreme Court, U.S.
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Case No. 08A179
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IN THE
SUPREME COURT OF THE UNITED STATES

ALI WARIS,
Petitioner,
v.

HARRIS COUNTY, CHARLES CUNNINGHAM, UMAIR SHAH, AND HERMINIA PALACIO
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

September 2, 2008

ALI WARIS, Petitioner *pro se*
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QUESTIONS PRESENTED

The defense in this case had prior relationship with the presiding judge who ignored Respondents' numerous criminal acts including mail fraud, spoliation of evidence and perjury.

1. Whether repeated episodes of gross judicial misconduct in this case denied the *pro se* litigant a meaningful access to court .

2. Whether the appellate court deviated from standard of review in this case to cover up the misconduct of the district court, thereby, denying Petitioner's statutory right to appeal under 28 U.S.C. Section 1291.

PARTIES TO THE PROCEEDINGS

PETITIONER

Ali Waris

RESPONDENTS

Harris County, Tx
Charles Cunningham
Herminia Palacio
Umair Shah

CORPORATE DISCLOSURE STATEMENT

(Rule 29.6)

Petitioner is a natural person and not a corporation, parent company or subsidiary.

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Pursuant to 5TH CIR. R. 47.5, the court determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in the 5TH Circuit. R. 47.5.4. The district court opinion is also not published.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit was entered on June 4, 2008. The time to file this petition for a writ of certiorari is on or before September 2, 2008. On August 19, 2008, Petitioner filed an application for extension of time within which to file a writ for certiorari. Justice Scalia on August 28, 2008, denied the application. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE[1]

This is a civil rights case against employment discrimination in violation of Title VII (42 U.S.C.2000e-5), Section 1985(3) Conspiracy, Section 1983 carrying the Fourteenth Amendment and the First Amendments, and various State law violations.

The case is against Harris County ("COUNTY"), Texas, and three officials of its Public Health Department, known as Harris County Public Health and Environmental Services("HCPHES"): Executive Director Herminia Palacio ("PALACIO"), Deputy Director Umair Shah ("SHAH") and Human Resource Manager Charles Cunningham ("CUNNINGHAM") in their personal capacities. [*USCA5*, 15-41].

The County together with Palacio, Shah and Cunningham are the Defendants-Respondents, collectively referred to as "Respondents."

In May 2005, Petitioner, a U. S. Citizen of Asian-Indian origin, applied for the job of Area

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[1] The entire record in this case is referenced in consecutive page numbers preceded by the initials ***USCA5*** (United States Court of Appeals 5th Circuit). Thus all references to the record in this Brief will be made accordingly.

Manager at one of the HCPHES' Public Health Clinics in Humble, Texas.

Petitioner had an outstanding background in health care management. He had double Master's degrees in related fields, and several years of operational and consulting experience at the executive level.

Petitioner's immediate supervisor, Binh Nguyen (NGUYEN), then Chief of Health care Services, was impressed by Petitioner's background and invited him for a second interview.

Though Nguyen was very supportive of Petitioner's candidacy, both Cunningham and Shah were hostile to him during this interview. They asked unrelated and harassing questions and made extensive notes (destroyed after the commencement of this action in violation of the State's criminal law). Palacio was not involved at this stage.

During the discovery of this case it was revealed that at the selection stage, Cunningham was pushing for a White candidate by the name of Chrisly Dillon who did not even meet the minimum background for the job [*Id.*1242 and 1244].

Ultimately, however, Nguyen prevailed as he insisted for Petitioner selection based on merit *vis-à-vis* Dillon whose background was severely deficient for the job. This tension is well recorded [*Id.* 1244].

Though Shah was of the same national origin and race as Petitioner, he was so racially insecure that he went along with Cunningham to appease him so that he could strengthen his own position in the County's racist atmosphere. A review of Shah's conduct in the present saga corroborates this perspective [*Id.* 869-946].

Petitioner's references checked out to be excellent [*Id.* 1688] and he joined the position on June 28, 2005.

Development of a False Paper Trail

Cunningham, however, never forgave Petitioner for having secured the job against his recommendation. As follows, Cunningham kept instigating conspiracies against Petitioner to settle his scores [*Id.* 900-906]:

First, Cunningham asked one of his subordinates, Jan Allison, to write a complaint against Petitioner which he quietly kept in Petitioner's personal file without confronting Petitioner with it. Allison in her complaint indicates that she was writing the complaint on Cunningham's behest. The crux of Allison's complaint was that in a meeting, Petitioner "grilled" her by asking too many questions [*Id.* 901-902].

Later, Cunningham asked another employee, Colleen Hodges, to write a complaint against Petitioner. This complaint was also quietly kept in Petitioner personal file without giving Petitioner any opportunity

to rebut. Hodges also indicates that she was writing the complaint on Cunningham's demand. The crux of Hodges' complaint was that she wanted to use the Clinic parking lot to spay and neuter community dogs but Petitioner [unreasonably] insisted that he would not approve the request unless he got it in writing [*Id.* 903-904].

Lastly, when Petitioner tried to question Stephani Adams, one of his subordinates, for missing work 2-3 days a week and not completing her monthly reports because she was spending time with Shah during work hours, Cunningham instigated Adams to write a grievance against Petitioner. [*Id.* 902].

Cunningham's conspiracy was so well-founded that in an e-mail he wrote to Shah that he wished the dispute between Petitioner and his subordinate would not resolve which would give him an "opportunity" to take care of the Petitioner. This is exactly what Cunningham and Shah did. They terminated Petitioner a day before his answer to Adams' Grievance was due. Understandably, they did not want Petitioner to be able to rebut Adams' Grievance.

Ironically, Adams' grievance was cited by the County as one of the reasons for Petitioner's termination. Petitioner was denied pre-termination and post-termination hearing to clear his name against a defamatory letter of termination that has ruined his career since it

has been available to the public under the Texas Open Government Act.

Needless to mention, Petitioner's position was filled by a White person.

The "complaints" that Cunningham and Shah *secretly* got the employees to write against Petitioner became County's *pretext* to terminate him. Interestingly, none of these Complaints were under affidavit and some were anonymous allegations by third parties.

Other complaints were hearsay over hearsay. Yet the district court admitted this as evidence and granted County's Motion for Summary Judgment on that basis alone.

The district court also ignored the affidavit filed by the Clinic staff in favor of Petitioner.

An intertwined factor is the reforms Petitioner made immediately after taking over the clinic job. Petitioner had discovered several gross mismanagement issues in the operation of the clinic including many lapses on the clinical side seriously affecting patient care.

Any reasonable person would agree that such issues warranted immediate attention.

Petitioner's attempted reforms became another point of conflict since the money allocated to these items was being squandered by the top leadership of HCPHES. Shah was admittedly embarrassed since him and

Petitioner were identified being of the same race and national origin and this was another reason for Shah to get rid of Petitioner. Thus the motivating factor in the unlawful termination was still Petitioner's race.

Petitioner strongly believes he did the right things in each instance and would act exactly the same way if he had to do the things all over again. This is validated from the fact that Petitioner did not receive a single warning from his immediate supervisor Nguyen who was supportive of him throughout and who himself took an early retirement at age 63 due to the County's increasingly racist atmosphere.

Petitioner's case was as straightforward as it could be. Petitioner (1) was never reprimanded before his abrupt termination; (2) was terminated a day before his response to the grievance against him was due; (3) was denied pre-termination and post-termination hearing by the County; (4) had passed the *McDonnell Douglas* test[2] which is the gold-standard in employment discrimination cases.

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2 McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Judicial Misconduct to Suppress Defense's Crimes

With no defense at hand, the County resorted to unlawful conduct which has become County's *modus operandi.*

As a first step, the case was removed from a neutral trial judge and *reassigned* to the Honorable Gray H. Miller [*Id.* 46] who was a close friend of then Chief County Commissioner (who also happened to be the County Judge).

Soon after the reassignment of the case, Assistant County Attorney, Nick Turner, the defense counsel in the case, was caught in *ex-parte* communications with Judge Miller [*Id.* 165-166]. When Petitioner raised serious objections on the *ex parte* communications, Turner forged postal receipts of *certified mail* in order to prove that Petitioner was sent copies of the *ex parte* communications [*Id.*163].

Petitioner caught the forgery and reported it to the district court in the form of letters and a *Motion to Disqualify the Defense Counsel for Misconduct* [*Id.*205-246]. The Motion was denied as *irrelevant* [*Id.* 377].

Emboldened by the court's support, Turner committed additional crimes. First, he caused the destruction of incriminating evidence. Under Texas law, pre-mature destruction of documents owned by a local government is a crime.

When the Petitioner filed his *Motion to Compel Disclosure on the Destruction of Documents*, for mysterious reasons, it was never docketed though Petitioner had a receipt of its submission.[3] [*Id.* 888-889].

As expected, Petitioner's *Second Motion to Compel Disclosure on the Destruction of Documents* [Id. 838] was denied by the court [*Id.* 868].

Next, Tuner induced Cunningham and Palacio to file false affidavits. When Petitioner discovered the perjury, he filed a *Motion for Sanctions Against Perjury* [*Id.* 1749] which was denied [*Id.*1815].

The record in this case is so comprehensive, and each event so well recorded, that there are not many disputes over the occurrence of the incidents or Petitioner's explanation thereof.

The bases of the trial court's final ruling are flawed and are obviously an egregious abuse of discretion. The *Recommendation and Memorandum* of Magistrate Nancy K. Johnson [*Id.* 1760-1792] was duly adopted by the district court [*Id.* 1817-1818] [App. B] without any consideration of the 28 Objections that the

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[3] In his complaint on judicial misconduct against Magistrate Nancy K. Johnson, Petitioner provided evidence of Magistrate Johnson's role in the unlawful prevention of the docketing of his motion. However, the Court of Appeals exempted Magistrate Johnson from replying to the Complaint under oath. Consequently, Magistrate's explanation was inconsistent with the documented facts.

Petitioner filed under Rule 72 (b) of the Fed. Rules of Civ. Proc. [*Id.* 1793-1814].

The linchpin of the entire ruling is the pretextual paper trail, against the Petitioner, secretly developed by the Respondents. Petitioner's challenge to that paper trail is nowhere mentioned in the ruling. Nor is the affidavit by a non-interested party, contradicting Respondents' fabricated allegations, considered by the trial court.

Petitioner filed his timely Objections and pointed out over 28 discrepancies in the Recommendation [*Id.* 179]. Petitioner's Amended Objections [*Id.* 1812] also pointed out some errors of the district court.

In conclusion, the district court, after allowing the Respondents a series of criminal conduct, during the proceedings of the case that prejudiced this Petitioner's interest, also took away Petitioner's right to have the jury examine the fraudulent evidence against him. To add to it, the court also suppressed the testimony favorable to the Petitioner.

Errors of the Appellate Court

The appellate panel, angry at the Petitioner for exposing the misconduct of the district court, also decided to ignore a plethora of evidence favoring the Petitioner and affirmed the district court's ruling without any discussion on the fact that: (a) Petitioner's claim had passed the McDonnell Douglas

Test; (b) a jury undoubtedly would have found the pretextual paper-trail against the Petitioner to be bogus; (c) the proceedings of the trial court were heavily tainted; (d) the district judge never addressed Petitioner's 28 Objections to the Magistrate's Memorandum and Recommendation.

In the Appellant's Brief, Petitioner had posed the following three questions for the appellate panel's review :

ISSUE I

Whether the court abused its discretion in denying summary judgment for the appellant.

ISSUE II

Whether the court abused its discretion in granting summary judgment for the appellees.

ISSUE III

Whether the court constructively denied the appellant judicial remedy and equal protection or, in the alternative, abused discretion by not punishing appellees against their criminal conduct.

The **appellate panel chose not to answer** any of the questions. In fact, it could not have addressed Issue III without exposing the extreme judicial misconduct of the district

court which covered up a series of crimes of the defense counsel.

ARGUMENT

Based on *stare decisis*, the record in this case is overwhelmingly supports the fact that Petitioner was discriminated against on the basis of his race.

Part I of the four-prong *McDonnell Douglas* Test squarely fits on the Petitioner's claim. As demonstrated in his *Motion for Summary Judgment* [*Id.* 869], Petitioner (a) belonged to a protected class (uncontroverted); (b) was qualified for the position (uncontroverted); (c) was terminated from the position (uncontroverted), and (d) was replaced by a Caucasian (uncontroverted) [*Id.* 892-893].

Part II of the Test was also in Petitioner's favor. That is, County's pretext in terminating Petitioner was altogether bogus since the Petitioner was never confronted with the "complaints" against him which were secretly generated and filed [*Id.* 900-906]. Once the defense realized it was left with no argument in support of its unlawful conduct, it resorted to illegal means to win the case in connivance with the district court.

REPEATED EPISODES OF GROSS JUDICIAL MISCONDUCT DENIED THE PETITIONER A MEANINGFUL ACCESS TO COURT .

A trial court is duty-bound to discipline a counsel of record who perpetrated crimes related to the proceeding of the case. "In our system of justice the opportunity to be heard is a litigant's most precious right and should be sparingly denied.'" *Chrysler Corp. v. Carey,* 186 F.3d 1016, 1020 (8th Cir. 1999) (quoting *Edgar v. Slaughter,* 548 F.2d 770, 773 (8th Cir. 1977).

When a litigant's conduct abuses the judicial process, dismissal of a lawsuit is a remedy within the inherent power of the court. *Pope v. Federal Express Corp.*, 974 F.2d 982, 984 (8th Cir. 1992).

Unfortunately, in this case the court itself was involved in the abuse of the judicial process. Not only the Respondents were not punished for their criminal conduct openly perpetrated on the proceedings, the court admitted false affidavits as evidence and, at the same time, altogether suppressed affidavits favoring Petitioner's position.

APPELLATE COURT DEVIATED FROM STANDARD OF REVIEW TO COVER UP THE MISCONDUCT OF THE DISTRICT COURT, THEREBY, DENYING PETITIONER'S STATUTORY RIGHT TO APPEAL UNDER 28 U.S.C. SECTION 1291.

The Fifth Circuit Court of Appeals reviews district court's grant of summary judgment *de novo,* applying the same standards as would the district court. *Pratt v Houston*, 247 F.3d 601,605-06 (5th Cir.2001). In this case,

however, the Fifth Circuit deviated from this rule to cover-up the gross misconduct of the district court.

In *Reeves v. Sanderson Plumbing Prods, Inc.*, 530 U.S. 133 (2000),the Supreme Court unanimously held that a plaintiff's *prima facie* case, combined with evidence sufficient to rebut employer's non-discriminatory explanation for discharge, often meets plaintiff's burden of persuasion. This is what the appellate court would have found in this case had it not deviated from its standard of review.

The appellate court also disregarded Supreme Court's ruling in *Reeves* 120 S. Ct. at 2110 which required that in determining the sufficiency of evidence, a court must credit the employee's evidence, and consider only the evidence from the movant that has not been contradicted or impeached, and which is provided by disinterested witnesses. *See* also, *Tart v. Illinois Power Co.*, 366 F.3d 461 (7th Cir 2004).

CONSIDERATION FOR REVIEW OF CERTIORARI

Of all the petitions for writ of certiorari pending before the Court at the present time, this is one of the most compelling petitions since it provides details on the gross misconduct of the federal district court duly covered up by the appellate panel as is reflected in its review of this case.

Justice Antonin Scalia, who supervises the Fifth Circuit, must note the appellate court's active protection of the bad behavior of the district courts, under it, so much so that the Fifth Circuit has become a laughing stock in public and at various bar association in the South of its loose control. This has resulted in the promotion of a toxic and obnoxious culture implicating two federal judges who are under criminal investigation.[4]

This Petition must also be specially reviewed by Justice Steven Breyer who chaired the committee on the rules of judicial misconduct

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[4] Harris County, the third largest in the nation, where the U.S. District Court for the Southern District of Texas is located and where the events referenced in this Petition took place, has become a poster child for criminal networking among government officials.

In less than a year, a significant number of officials in Harris County have been exposed by the media and the public. Federal Judge Sam Kent was charged with sexually assaulting his case manager in a drunken state in his chambers during lunch hours; County District Attorney Chuck Rosenthal resigned against charges of obstruction of justice, two County Commissioners Jerry Eversole and Frank Lee are under investigation for bribery and embezzlement. Justice David Medina, of the State Supreme Court, and his wife were indicted by a grand jury against arson to their house to collect insurance.

The officials involved in the criminal conduct in present case, Nick Turner, Esq. and County Attorney Mike Stafford are still working in their positions. So are Charles Cunningham and Herminia Palacio who supplied false affidavits which the district court accepted without any inquiry and despite Petitioner's protest.

to note the blatant violation of those rules by the Fifth Circuit.

Finally, the Petition must also be particularly considered by Chief Justice John Roberts who in his 2007 Year-end Report states: "When entertaining a complaint about a judge, the Judiciary must apply the same qualities of reason, impartiality, and wisdom that epitomize the judicial process. The Judiciary cannot tolerate misconduct. The public rightly expects the Judiciary to be fair but firm in policing its own."

CONCLUSION

Petitioner respectfully submits to this Court that based on the reason that Petitioner's meritorious claim was not properly adjudicated due to the misconduct of the district court, and the appellate court denied Petitioner's statutory right to an appeal on the relevant issue, this *Petition for a Writ of Certiorari* must be granted.

Respectfully submitted,

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